

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS,
TYLER DIVISION

UNITED STATES OF AMERICA, and)	
STATE OF TEXAS)	
)	
Plaintiffs,)	
)	
v.)	
)	CIVIL ACTION NO.:
CITY OF CARTHAGE, TEXAS)	
)	
)	
Defendant.)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Texas, by and through its Attorney General and acting on the request of the Texas Commission on Environmental Quality ("TCEQ"), file this Complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action for injunctive relief and civil penalties brought under Section 309 of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1319, against the defendant City of Carthage ("Carthage") for the discharge of pollutants from its Publicly Owned Treatment Works ("POTW") in violation of Section 301 of the Act, 33 U.S.C. § 1311, for the violation of the

reporting requirements of 40 C.F.R. § 503.18(a) promulgated pursuant to Section 405 of the Act, 33 U.S.C. § 1345, for the violation of effluent limitations and other conditions established in the National Pollutant Discharge Elimination System ("NPDES") and Texas Pollutant Discharge Elimination System ("TPDES") permits issued to Carthage pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and for improper operation and maintenance of the POTW in accordance with its permits. Plaintiff seeks an injunction requiring Carthage to upgrade its POTW and to take all steps necessary to come into compliance with the Act, the regulations and its permits.

2. The State of Texas is a plaintiff in this action and is joined as a party under Section 309(e) of the Act, 33 U.S.C. § 1319(e). Whenever a municipality is a party to a civil action brought by the United States under Section 309, the Act requires the State in which the municipality is located to be joined as a party.

JURISDICTION, VENUE, AND NOTICE

3. This Court has subject matter jurisdiction over this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

4. The United States has authority to bring this action on behalf of the Administrator of EPA under Section 506 of the Act, 33 U.S.C. § 1366, and under 28 U.S.C. §§ 516 and 519.

5. Venue is proper in this judicial district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (d) and 1395(a), because this is the district where Carthage is located and the district in which the violations occurred.

6. Pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to the State of Texas, which joins in this action as a co-plaintiff.

THE PARTIES

7. Plaintiff United States of America is acting at the request and on behalf of the Administrator ("Administrator") of the EPA. The United States has the authority to bring this action on behalf of the Administrator of the EPA under Section 506 of the Act, 33 U.S.C. § 1366 and 28 U.S.C. §§ 516 and 519.

8. Plaintiff State of Texas is acting at the request and on behalf of the TCEQ. Since September 14, 1999, Texas has shared with EPA responsibility for implementation of the CWA permitting program in Texas. Texas is also a party to this action pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e).

9. Defendant Carthage is a political subdivision of the State of Texas, duly chartered and formed under the laws of the State of Texas, and is a "municipality" within the meaning of

Section 502(4) of the Act, 33 U.S.C. § 1362(4), and a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

10. Defendant Carthage owns and operates the Hoggs Bayou Wastewater Treatment Facility, a "publicly owned treatment works" (or "POTW") located in Carthage, Texas, that discharges "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), into "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

FEDERAL STATUTES AND REGULATIONS

11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the "discharge of pollutants" except in compliance with the Act, including Section 402 of the Act, 33 U.S.C. § 1342.

12. The term "person" is defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5), to mean "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

13. The term "pollutant" is defined in Section 502(5) of the Act, 33 U.S.C. § 1362(6), to include "sewage, garbage, sewage sludge, . . . chemical wastes, [and] biological materials . . . discharged into water."

14. The term "navigable waters" is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), to mean "the waters of the United States, including the territorial seas."

15. The term "discharge of pollutants" is defined in Section 502(12) of the Act, 33 U.S.C. § 1362(12), to mean "any addition of any pollutant to navigable waters from any point source"

16. The term "point source" is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to mean "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, [or] tunnel . . . from which pollutants are or may be discharged."

17. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits that authorize the discharge of any pollutant into navigable waters. Section 402(a) also provides that permittees may only discharge in compliance with Section 301 of the Act, 33 U.S.C. § 1311, and such other conditions as EPA determines is necessary to carry out the provisions of the Act.

18. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program and, after receiving approval of its program by the EPA may issue NPDES permits. The State of Texas established its own NPDES permit program and received EPA approval of its program in 1999. Through the TCEQ, Texas issues TPDES permits. These TPDES permits obligate permittees to abide by all federal NPDES guidelines and any additional state disposal guidelines. At all

times relevant to this Complaint, Defendant Carthage had a TPDES or NPDES permit. This Complaint will refer to these permits collectively as "Permit No. TX0032361" and "NPDES permit."

19. Pursuant to Section 301 of the Act, 33 U.S.C. § 1311, and Section 402 of the Act, 33 U.S.C. § 1342, the Administrator is authorized to specify effluent limitations in NPDES permits. Effluent limitations include - but are not limited to - restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges, as defined in Section 502(11) of the Act, 33 U.S.C. § 1362(11).

20. Pursuant to Section 308 of the Act, 33 U.S.C. § 1318, and Section 402 of the Act, 33 U.S.C. § 1342, the Administrator is authorized to specify effluent sampling methods and frequencies in NPDES permits.

21. Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, inter alia, Section 301 of the Clean Water Act, 33 U.S.C. § 1311, or violates any permit condition or limitation implementing, inter alia, Sections 301, 308 or 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1318 or 1342.

22. Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, provide that any person who violates any inter alia, Section 301 of the Clean Water Act, 33 U.S.C. 1311, or who violates any condition or limitation of a NPDES permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$27,500 per day for each violation occurring after January 31, 1997, and \$32,500 for each violation occurring after March 15, 2004.

23. Pursuant to 40 C.F.R. § 122.41(e), promulgated under the Act, a standard condition in all NPDES permits states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

24. Pursuant to 40 C.F.R. § 122.41, promulgated under the Act, the permittee must submit Discharge Monitoring Reports ("DMRs") to the EPA according to the time intervals specified in the NPDES permit. Typically, permittees are required to submit DMRs to the EPA on a monthly basis.

25. Pursuant to 40 C.F.R. § 122.41(a), promulgated under the Act, a standard condition of all NPDES permits requires that the permit holder comply with all conditions of the permit: "Any

permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action."

26. Pursuant to 40 C.F.R. § 122.41(l), promulgated under the Act, provides that any person who violates, inter alia, Section 301 of the Act, 33 U.S.C. § 1311, a standard condition of all NPDES permits requires that the permit holder report to the EPA any non-compliance that may endanger health or the environment.

27. Pursuant to 40 C.F.R. § 122.41 (k)(1) and 40 C.F.R. §§ 122.22 (3)(a) and (b), promulgated under the Act, a standard condition of all NPDES permits requires that a responsible executor or authorized agent of the organization controlling the point source sign, and certify as accurate, all DMRs and non-compliance reports submitted to the Administrator.

28. Pursuant to regulations at 40 C.F.R. § 122.6, a permittee may continue to discharge in accordance with the conditions of an expired permit until the effective date of a new permit if the permittee timely submits an application for a new permit and EPA, through no fault of the permittee, does not issue a new permit on or before the expiration date of the previous permit. A permit continued under this regulation remains fully effective and enforceable.

29. Pursuant to 40 C.F.R. § 403.3(o), promulgated under the Act, the term POTW is defined as a treatment works, (as that term

is defined under Section 212 of the Act, 33 U.S.C. § 1292), that treats municipal sewage and is owned by a State or municipality. This definition includes the sewers, pipes and other conveyances which convey sewage to the sewage plants.

30. Pursuant to 40 C.F.R. § 503.18(a), promulgated under Section 405 of the Act, 33 U.S.C. § 1345, a permittee must submit a sewage sludge report for each calendar year. These reports are due on February 19th of each year.

31. Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, provide that any person who violates, inter alia, Section 301 of the Act, 33 U.S.C. § 1311, or who violates any condition or limitation of a NPDES permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$27,500 per day for each violation occurring after January 31, 1997, and \$32,500 for each violation occurring after March 15, 2004.

GENERAL ALLEGATIONS

32. Carthage owns and operates a publicly owned treatment works, which is located east of the City of Carthage and south of Hoggs Bayou, approximately 1.5 miles east of the intersection of U.S. Highways 59 and 79 in Panola County, Texas (hereinafter "Carthage POTW").

33. The Carthage POTW is a "treatment works" and a "publicly owned treatment works" as that term is defined by 40 C.F.R. § 403.3(o).

34. The Carthage POTW treats and discharges domestic and commercial sewage from the City of Carthage.

35. On or about August 19, 1996, the EPA issued NPDES Permit No. TX0032361 to the City of Carthage, pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342. The permit became effective on September 1, 1996.

36. Permit No. TX0032361 authorized Carthage to discharge sewage, which is a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), from Outfall Number 001, which is a "point source" as defined by Section 502(14), 33 U.S.C. § 1362(14), into the receiving waters of the Hoggs Bayou, thence to the Sabine River above Toledo Bend Reservoir in Segment No. 0505 of the Sabine River basin, which is a "navigable water[]" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), in accordance with the effluent limitations, monitoring requirements and other conditions set forth in the Permit.

37. Permit No. TX0032361, reissued as TPDES Permit No. 10074-003 by the Texas Natural Resource Conservation Commission (TCEQ's predecessor agency) on or about December 22, 1999, was due to expire on April 1, 2002, but has been administratively

extended in accordance with federal regulation, 40 C.F.R.

§ 122.6.

38. Part I.A. of Permit No. TX0032361 provides effluent limitations for the discharge of Carbonaceous Biochemical Oxygen Demand ("CBOD"), Total Suspended Solids ("TSS"), Ammonia-Nitrogen, Dissolved Oxygen, and Fecal Coliform Bacteria from Outfall Number 001.

The discharge limitations are the following:

<u>Parameter</u>	<u>Limit</u>
Fecal Coliform Bacteria, Avg	200 colonies/100ml
Fecal Coliform Bacteria, 7 day	400 colonies/100ml
NH3-N, 7day	6mg/l
NH3-N, Avg.	3 mg/l
CBOD, 7 day	15 mg/l

39. According to the DMRs submitted by Carthage, the Carthage POTW has repeatedly violated Part I.A. of Permit No. TX0032361. The Carthage POTW has discharged sewage into the receiving waters of the Hoggs Bayou, thence to the Sabine River above Toledo Bend Reservoir in Segment No. 0505 of the Sabine River basin, which has exceeded the effluent limitations authorized for Fecal Coliform Bacteria, CBOD, and Ammonia-Nitrogen in the Permit.

40. Parts II.B. and II.C. of Permit No. TX0032361 describe testing procedures that Carthage must follow in testing and analyzing effluent.

41. Carthage violated Parts II.B. and II.C. of Permit No. TX0032361 by failing to follow mandated testing procedures.

42. Part I.A. of Permit No. TX0032361 provides that the permit holder perform required toxicity tests.

43. Carthage violated Part I.A. of Permit No. TX0032361 by failing to provide required toxicity tests.

44. Part II.D.1. of Permit No. TX0032361 provides that the permit holder shall institute a program by no later than September 1, 1997, directed toward optimizing the efficiency and extending the useful life of the Carthage POTW. The permittee was directed to consider a number of factors in its program, including the influence of loading, flow and design capacity; the effluent quality and plant performance; age and expected life of equipment; the financial status of the facility; operator certification and training plans and status; preventative maintenance programs; and an overall evaluation of conditions at the facility.

45. Carthage has violated Part II.D.1. of Permit No. TX0032361 by failing to institute a program directed toward optimizing the efficiency and extending the useful life of the Carthage POTW.

46. Part II.D.2. of Permit No. TX0032361 and 40 C.F.R. § 530.18(a)(1) require Carthage to submit an annual evaluation of the sewage sludge generated by the Carthage POTW.

47. Carthage violated Part II.D.2. of Permit No. TX0032361 and 40 C.F.R. § 530.18(a)(1) by failing to submit a sewage sludge report of the Carthage POTW for the 1998 calendar year.

48. Part III.B.3. of Permit No. TX0032361 provides that the permit holder shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the permittee as efficiently as possible and in a manner that will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of the permit.

49. Carthage has violated Part III.B.3. of Permit No. TX0032361 by failing to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) in order to minimize upsets and discharges of excessive pollutants and achieve compliance with the conditions of the permit at the Carthage POTW.

50. Part III.C. of Permit No. TX0032361 requires Carthage to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures in order to determine the level of pollutants in the wastewater discharged from Outfall 001 at the Carthage POTW.

51. Carthage violated Part III.C. of Permit No. TX0032361 by failing to at all times properly sample and test its effluent and monitor its compliance with permit conditions according to specific procedures in order to determine the level of pollutants in the wastewater discharged from Outfall 001 at the Carthage POTW.

52. Part III.D. of Permit No. TX0032361 requires Carthage to file with the EPA certified DMRs of the results of monitoring, and noncompliance reports when appropriate.

53. Carthage has violated Part III.D. of Permit No. TX0032361 by failing to submit required DMRs.

54. Since December 24, 1997, the EPA has issued four formal Administrative Orders against the Defendant, citing the Carthage POTW for exceeding permit effluent limits and violating DMR reporting requirements.

55. On December 24, 1997, the EPA issued Administrative Order Docket No. VI-98-0031 to Carthage. The Order required the City to attain compliance with its NPDES permit effluent limitations and reporting requirements. The Order also required the City to submit, within thirty days, either a written report detailing the specific actions taken to correct the violations or a comprehensive written plan for eliminating the cited violations within the shortest possible time. The City failed to comply

with the terms and conditions of the Order and remained in noncompliance.

56. On September 24, 1999, the EPA issued Administrative Order Docket No. CWA-6-0089-99 to Carthage. The Order required the City to attain compliance with its NPDES permit effluent limitations. The Order also required the City to submit, within thirty days, either a written report detailing the specific actions taken to correct the violations or a comprehensive written plan for eliminating the cited violations within the shortest possible time. The City failed to comply with the terms and conditions of the Order and remained in noncompliance.

56. On March 28, 2000, the EPA issued Administrative Order Docket No. CWA-6-2008-00 to Carthage. The Order required the City to comply with the annual sludge monitoring report requirements set forth in 40 C.F.R. § 503.18(a). The Order also required the City to submit, within thirty days, either a written report detailing the specific actions taken to correct the violations or a comprehensive written plan for eliminating the cited violations within the shortest possible time. The City failed to comply with the terms and conditions of the Order and remained in noncompliance.

57. On March 29, 2001, the EPA issued Administrative Order Docket No. CWA-6-01-1064 to Carthage. The Order required the

City to attain compliance with its NPDES permit effluent limitations, monitoring requirements, and reporting requirements. Additionally, the Order required the City to show cause why the EPA should not take further enforcement action due to the City's failure to comply with the Act and its regulations. The Order also required the City to submit, within thirty days, either a written report detailing the specific actions taken to correct the violations or a comprehensive written plan for eliminating the cited violations within the shortest possible time. The City failed to comply with the terms and conditions of the Order and remained in noncompliance.

58. Carthage has failed to make the required improvements at the Carthage POTW and failed to attain compliance with the effluent limitations in the permit.

FIRST CLAIM FOR RELIEF

59. Carthage has repeatedly violated Section 301 of the Act, 33 U.S.C. § 1311, because the Carthage POTW has discharged sewage into the receiving waters of the Hoggs Bayou, thence to the Sabine River above Toledo Bend Reservoir in Segment No. 0505 of the Sabine River basin, which had exceeded the effluent limitations authorized for Fecal Coliform Bacteria, BOD, and Ammonia-Nitrogen in Part I.A. of Permit No. TX0032361.

60. Carthage is liable under Section 309 (d) of the Act, 33 U.S.C. § 1319 (d), for a civil penalty of up to \$27,500 per day for each violation of the effluent limitations set forth in Part I (A) of Permit No. TX0032361 that occurred after January 31, 1997, and \$32,500 for each violation occurring after March 15, 2004.

SECOND CLAIM FOR RELIEF

61. Carthage violated 40 C.F.R. § 503.18(a), promulgated pursuant to Section 405 of the Act, 33 U.S.C. § 1345, by failing to submit a sewage sludge report of the Carthage POTW for the 1998 calendar year as required by Part II.D.2. of Permit No. TX0032361.

62. Carthage is liable under Section 309 (d) of the Act, 33 U.S.C. § 1319 (d), for a civil penalty of up to \$27,500 per day for each violation of the reporting requirements set forth in Part II.D.2. of Permit No. TX0032361, and \$32,500 for each violation occurring after March 15, 2004.

THIRD CLAIM FOR RELIEF

63. Carthage violated Parts II.B. and II.C. of Permit No. TX0032361, and thereby violated Section 301 of the Act, 33 U.S.C. § 1311, by failing to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures in order to determine the facility's compliance or noncompliance with the permit and regulations.

64. Carthage is liable under Section 309 (d) of the Act, 33 U.S.C. § 1319 (d), for a civil penalty of up to \$27,500 per day for each violation of the sampling, testing, and monitoring requirements set forth in Parts II.B. and II.C. of Permit No. TX0032361, and \$32,500 for each violation occurring after March 15, 2004.

FOURTH CLAIM FOR RELIEF

65. Carthage violated Parts I.A. of Permit No. TX0032361, and thereby violated Section 301 of the Act, 33 U.S.C. § 1311, by failing to submit a Whole Effluent Toxicity test for two organisms in order to determine the facility's compliance or noncompliance with the permit and regulations.

66. Carthage is liable under Section 309 (d) of the Act, 33 U.S.C. § 1319 (d), for a civil penalty of up to \$27,500 per day for each violation of the sampling, testing, and monitoring requirements set forth in Parts II.B. and II.C. of Permit No. TX0032361, and \$32,500 for each violation occurring after March 15, 2004.

FIFTH CLAIM FOR RELIEF

67. Carthage violated Part III.B.3. of Permit No. TX0032361, and thereby violated Section 301 of the Act, 33 U.S.C. § 1311, by failing to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the permittee as

efficiently as possible and in a manner that will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of the permit.

68. Carthage is liable under Section 309(d) of the Act, 33 U.S.C. § 1319 (d), for a civil penalty of up to \$27,500 per day for each violation of the operation and maintenance requirements set forth in Part III.B.3. of Permit No. TX0032361, and \$32,500 for each violation occurring after March 15, 2004.

CONTINGENT LIABILITY OF THE STATE OF TEXAS

The State of Texas is liable under Section 309(e) of the Act, 33 U.S.C. § 1319(e), for payment to comply with any judgment against Carthage to the extent that the laws of Texas prevent the City from raising the revenues needed to comply with the judgment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of Texas, respectfully pray that this Court provide the following relief:

1. A permanent injunction directing defendant Carthage to take all steps necessary to come into permanent, consistent compliance with the Clean Water Act, the regulations promulgated thereunder, and its NPDES/State permit, including complying with effluent limits and conducting proper operation and maintenance;

3. A judgment awarding the United States and the State of Texas the costs of this action; and

4. Such further relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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